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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03-185; DA 19-1231]

Low Power Television Digital Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Media Bureau seeks to update the record in MB Docket No. 03-185 on the operation of analog radio services by digital low power television stations (LPTV) as ancillary or supplementary services.

DATES: Comments Due: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply Comments Due: **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by MB Docket No. 03-185, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room

TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m.

All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Shaun.Maher@fcc.gov of the Media Bureau, Video Division, (202) 418-2324.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Notice of Proposed Rulemaking, DA 19-1231, released December 4, 2019. The full text is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-

B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Synopsis

1. In this document, the Media Bureau (Bureau) seeks to update the record in MB Docket No. 03-185 on the operation of analog radio services by digital low power television stations (LPTV) as ancillary or supplementary services under § 74.790(i) of the Commission's rules. Due to the impending deadline for elimination of the analog LPTV service, and recent developments in the record, the Bureau seek to refresh the record in this proceeding.

2. Historically, some analog LPTV stations licensed on channel 6 have operated with very limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive the audio portion of these LPTV stations at 87.76 MHz, which is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). When these LPTV stations convert to digital, however, they will be unable to continue providing such radio service because the digital audio portion of their signal can no longer be received by standard FM receivers.

3. As part of the transition from analog to digital operations, the Commission sought comment in a 2014 Notice of Proposed Rulemaking in MB Docket No. 03-185, 29 FCC Rcd 12536 (2014) (NPRM) on whether to allow LPTV stations on digital television channel 6 to continue to operate these analog FM radio-type services on an ancillary or supplementary basis. Specifically, the Commission sought comment on whether to permit LPTV stations on digital television channel 6 to operate dual digital and analog transmission systems. The Commission sought to determine whether a digital LPTV station can provide an analog FM radio-type service as an ancillary or supplementary service consistent with the Communications Act of 1934, as

amended, and the rules. The Commission also sought comment on the potential for a digital LPTV station's analog FM radio-type service to interfere with or disrupt the LPTV station's digital TV service and/or interfere with primary licensees. Finally, the Commission asked whether such operations should be subject to the Part 73 rules applicable to FM radio stations and whether the analog FM radio-type service should be subject to the five percent fee imposed on revenues generated by ancillary or supplementary services. In a 2015 Report and Order, the Commission declined to decide this issue, and instead noted that it would make a determination at a later date.

4. Given the upcoming deadline for LPTV to transition to digital, the Bureau finds it appropriate to refresh the record in this docket. Several parties have also recently raised some additional issues on which the Bureau seeks comment. For example, Venture Technologies Group, Inc., et al. (Channel 6 Commenters) maintains that LPTV licensees should be allowed to make "the most efficient use of spectrum" by providing analog FM radio-type service on an ancillary or supplementary basis. Preserve Community Programming Coalition (PCPC) agrees and recommends that the Commission modify its rules to allow those LPTV stations currently licensed and operating in analog on channel 6 to continue transmitting an analog audio carrier when they transition to digital operations on channel 6. Both commenters claim that the provision of independent aural and visual carriers are allowed under the rules and we seek comment on whether that is an accurate reading of the Commission's technical rules.

5. In addition, Channel 6 Commenters and PCPC maintain that digital LPTV stations can operate with supplementary audio signals pursuant to the existing ancillary or supplementary services rules. The Bureau seeks comment on these matters. Specifically, the Bureau seeks comment on whether analog channel 6 LPTV stations currently operating an analog FM-radio type service should be permitted to continue to provide such service on an ancillary or supplementary basis after they transition to digital. Further, the Bureau seeks comment on whether, and how, the Commission could legally limit the number of stations eligible to offer

such a service. Should the Commission determine to limit eligibility, the Bureau seeks comment on the basis for such a limitation. Should eligibility be limited to only those analog channel 6 LPTV stations “currently operating” an analog FM radio-type service? How should the Commission define the term “currently operating?” Should “currently operating” be defined as an analog channel 6 LPTV station providing an analog FM radio-type service as of the release date of this Public Notice? The Bureau seeks comment on this proposal, other cut-off dates, or alternate ways to limit eligibility.

6. Channel 6 Commenters and PCPC also maintain that analog radio signals “can co-exist on the same 6 MHz channel as a digital [c]hannel 6 LPTV station without harming TV or FM reception.” Channel 6 Commenters argues that “no verifiable evidence has ever been produced showing that a channel 6 television station, operating within the lawful parameters of its license, causes harmful interference to an FM radio station.” PCPC recommends revising the rules so that, “if the operation of the LPTV station causes any actual interference to the transmission of any authorized FM broadcast station, the LPTV station should be required to eliminate the interference or immediately suspend operations.” California State University Long Beach Research Foundation (Cal State) disagrees and maintains that the Commission’s current rules ignore the potential for interference between LPTV channel 6 analog audio operations and FM radio stations which Cal State describes as “particularly objectionable since LPTV are left free to propose facilities that are predicted to cause interference to primary service FM radio stations, even though LPTV is a secondary service.” Cal State asks that the Commission obtain “much more detailed information” on this issue and adopt rules to protect other stations from interference. The Bureau seeks comment on the question of whether analog FM-radio type services operated by digital LPTV channel 6 stations will cause impermissible interference to other services. The Bureau requests the submission of any more recent technical studies demonstrating the feasibility of transmitting analog audio signals within a digital television station’s spectrum.

7. The Commission rules require FM stations proposing operations on FM reserved band channels 201 through 220 to protect television stations operating on TV channel 6. Commenters should note that the Commission in July 2019 adopted an Notice of Proposed Rulemaking, 34 FCC Rcd 6537 (2019) proposing elimination of these protections entirely as of July 13, 2021 (the deadline for the digital LPTV transition) and adoption of a waiver process in the interim. The Commission acknowledged those analog LPTV channel 6 television stations providing FM radio type services and specifically sought comment on whether the proposed elimination of channel 6 television protection by FM radio stations would be compatible with LPTV audio operations on 87.7 MHz if such operations were allowed to continue.

8. Finally, given the passage of time since the NPRM was adopted, the Bureau seeks comment on the remaining issues raised in the NPRM. For example, as required by Section 336(b)(1) of the Act, is use of digital LPTV channel 6 for an analog service “consistent with the technology or method designated by the Commission for the provision of advanced television services”? The Bureau seeks comment on how an ancillary or supplementary analog service is “consistent with” digital technology. If the Commission decides to permit analog FM radio-type operations by digital LPTV stations on an ancillary or supplementary basis, the Bureau seeks comment on whether such operations should be subject to the Part 73 rules applicable to FM radio stations. Should channel 6 digital LPTV stations authorized to provide analog FM radio-type operations be prohibited from transferring such authorization and should the right to continue the analog operation terminate with an assignment or transfer?

9. In addition, the Bureau seeks further comment on whether the provision of an analog FM radio-type service on an ancillary or supplementary basis should be subject to a five percent fee on revenues generated by such service. Channel 6 Commenters maintains that “a supplementary 87.7 MHz audio signal qualifies as an ancillary service, which entitles the government to 5% of its revenue.”

Initial Regulatory Flexibility Act Analysis

The NPRM included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. The Bureau invites parties to file comments on the IRFA in light of this request to refresh the record. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of this document.

List of Subjects**47 CFR Parts 73 and 74**

Television.

Low Power Television.

FEDERAL COMMUNICATIONS COMMISSION.

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